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Back to Harvard

Professor Robert Steinfeld embarks on a year as a history fellow

UB Law Professor Robert Steinfeld, a legal historian who has written extensively on labor law, is tackling a new field of research this academic year in a place familiar to him: Harvard University, where he previously earned a doctoral degree in history.

Steinfeld is taking a sabbatical year as a Charles Warren Fellow, one of a half-dozen in Harvard's Warren Center for the Study of American History. It will be a chance to do some serious research and writing on a new area of interest: the expansion of American suffrage in the years between the American Revolution and the Civil War, and whether the early abandonment of property qualifications to vote had anything to do with the adoption of judicial review of legislative acts.

The idea for the project, he says, grew out of a seminar he and Professor Fred Konefsky taught last fall at UB Law on American constitutional history. "In the course of putting together materials for that seminar, I began to wonder whether the development of judicial review in this country bore any relationship to the early expansion of the suffrage," he says.

In a way, Steinfeld says, the question of voting rights is not discontinuous with his previous work on labor law. "I began to think that, at least historically, the kind of labor law you had depended in part on the scope of suffrage," he says. "In England, suffrage was crucial in changing the labor laws. Then I began to think about suffrage a little more; in the United States, suffrage got extended earlier here than in England, even though many people including John Adams were adamantly opposed to letting property less people vote.

"One of the things I began to realize is that in the decades following the Revolution judicial review was a very contentious issue. In effect, what judicial review does is put a limitation on the power of popular majorities. It gives ruling elites a kind of guarantee that even if suf-



Professor Robert Steinfeld

frage is expanded, their property is more certain not to be at risk."

Judges who advocated judicial review – the constitutional authority of judges to strike down legislation – almost invariably opposed extending the vote to those who did not own property, Steinfeld says.

"The issue in the 1780s and 1790s," he says, "was whether courts should be able to nullify acts of legislatures at all. The contention was that both state and federal constitutions made the branches of government equal, so how can you say that one branch has the ultimate authority to interpret the Constitution? Why isn't the legislature – elected by the people, after all – in an equally good position to interpret the Constitution?"

Steinfeld expects to turn this research

on suffrage and judicial review into his next book. "It would be very ambitious to think that I could come away from the fellowship with a completed book manuscript," he says. "But I will get launched on the project, do some writing as well as research, and at least generate a long article that likely will turn into a book later on."

The research will involve a lot of primary-source reading. The Harvard library, he says, owns a complete set of the papers coming out of various states' constitutional conventions, including the debates that occurred during those conventions. Also on the reading list are "a number of judicial biographies" and readings in the political history of certain states, as Steinfeld will look at how each of those states accommodated the idea of expanded suffrage.

One might think that documents nearly two centuries old might be somewhat obscure, but Steinfeld says that is not so. He has read, for example, the papers of the New York State constitutional conventions held in the 1820s. "They are quite straightforward," he says. "For one thing, most of the texts are printed, not in manuscript, and while the language is not exactly modern, it is not *Beowulf* either."

He will also have the camaraderie of the other Warren fellows – "a group of scholars working in generically similar areas," including at least one other legal historian. All will work on their individual topics, but exchange ideas at regular seminar meetings. Steinfeld also expects to incorporate some of what he learns into the next seminar offering in American constitutional history that he will teach at UB Law School when he returns.

"This research fellowship gives me the opportunity to spend some time launching the research for a new book," he says. "It is also good in terms of exposing me to all the latest currents in scholarship."